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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,097	09/26/2003	Paul Shellum	BLL-0043-C	7087

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EXAMINER

BARNIE, REXFORD N

ART UNIT PAPER NUMBER

2643

DATE MAILED: 03/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/672,097	<b>Applicant(s)</b> SHELLUM ET AL.	
	<b>Examiner</b> REXFORD N BARNIE	<b>Art Unit</b> 2643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 11-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 11-15 is/are rejected.
- 7) ☒ Claim(s) 6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

*RJBarnie*  
REXFORD BARNIE  
PRIMARY EXAMINER

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 and 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pack (US Pat# 6,526,025) in view of Business Wire (February 25, March 2, 1998) or PMP as prior art based (Wood and Sappington) "on the Design of Performance measurement Plans in the Telecommunications industry".

Regarding claim 1, Pack teaches a method for measuring network performance parity comprising of identifying a plurality of ILEC performance measurement for a first transaction and identifying a plurality of CLEC performance measurements for a second transaction based on ILEC and CLEC data respectively in (see figs. And cols. 5-8) and then determining parity but fails to teach calculating a remedy to be paid.

Calculating a remedy to be paid is well known in the telecommunication industry.

Business Wire teaches in an article dated March 2, 1998 titled "*EQUAL RISK*", *TCG innovative statistical approach gives regulators and policy makers framework for evaluating ILEC behavior-Not Just ILEC words-In Delivery "Performance Parity" Requirement of the 1996 Telecom Act* in (see page 2 of 2) that parity can be determined and if required, imposing a remedy to be paid by an ILEC.

Business Wire teaches in an article dated Feb 25, 1998 titled *a TCG says Reducing Entanglement, Improving ILEC Performance will Accelerate Local telephone Competition* in (see page 2 of 3) that if ILEC fails to "provide Performance parity, violators must face substantial penalties if not rivals will be hostages to ILEC's entangling inefficiency and poor quality of service and hostages make poor competitors".

State Regulators have implemented performance measurement and remedy plans known as PMP as an attempt to determine whether an ILEC is disadvantaging its rivals by delivering high quality to itself than to its rivals. Michigan Public Service Commission Case no U-11830 implemented a remedy plan (see page 1, page 2 "appendix" and Ohio and Illinois established PMP which has been effect since 1999 and Texas has the Texas 271 interconnection agreement. As part of the Michigan Plan for instance, an ILEC is required to make penalty payments directly to the affected CLEC in (see page 7 lines 1-11). Thus, the limitation of requiring an exchange to pay remedy, compensation or penalties to another was well Known based on the article.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of "Business Wire" or the known limitation of PMP into that of Pack thus making it possible to provide quality services, efficiency in services and to improve competition which translates to least cost routing or reduction in cost for communication services for customers.

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Regarding claims 2-3, Pack teaches taking mean measurements within a common time period in (see cols. 5-9).

Regarding claim 4, Pack teaches determining distribution and performance data associated with ILECs and LECS (see figs. And col. 3).

Regarding claim 5, Pack teaches a method for measuring network performance parity comprising of identifying a plurality of ILEC performance measurement for a first transaction and identifying a plurality of CLEC performance measurements for a second transaction based on ILEC and CLEC data respectively in (see figs. And cols. 5-8). Pack teaches comparison between performance data associated with a CLEC and ILEC which for instance can be analyzed and generated in a graph format in (see figs.).

Pack teaches determining if parity exist between a CLEC and an ILEC and taking corrective measures if necessary in (see col. 7 lines 1-25) but fails to teach calculating a remedy to be paid.

Calculating a remedy to be paid is well known in the telecommunication industry.

Business Wire teaches in an article dated March 2, 1998 titled *"EQUAL RISK", TCG innovative statistical approach gives regulators and policy makers framework for evaluating ILEC behavior-Not Just ILEC words-In Delivery "Performance Parity" Requirement of the 1996 Telecom Act* in (see page 2 of 2) that parity can be determined and if required, imposing a remedy to be paid by an ILEC.

Business Wire teaches in an article dated Feb 25, 1998 titled *a TCG says Reducing Entanglement, Improving ILEC Performance will Accelerate Local telephone Competition* in (see page 2 of 3) that if ILEC fails to "provide Performance parity,

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violators must face substantial penalties if not rivals will be hostages to ILEC's entangling inefficiency and poor quality of service and hostages make poor competitors".

State Regulators have implemented performance measurement and remedy plans known as PMP as an attempt to determine whether an ILEC is disadvantaging its rivals by delivering high quality to itself than to its rivals. Michigan Public Service Commission Case no U-11830 implemented a remedy plan (see page 1, page 2 "appendix" and Ohio and Illinois established PMP which has been effect since 1999 and Texas has the Texas 271 interconnection agreement. As part of the Michigan Plan for instance, an ILEC is required to make penalty payments directly to the affected CLEC in (see page 7 lines 1-11). Thus, the limitation of requiring an exchange to pay remedy, compensation or penalties to another was well Known based on the article.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of "Business Wire" or the known limitation of PMP into that of Pack thus making it possible to provide quality services, efficiency in services and to improve competition which translates to least cost routing or reduction in cost for communication services for customers.

Regarding claim 11, Pack teaches a method for measuring network performance parity comprising of identifying a plurality of ILEC performance measurement for a first transaction and identifying a plurality of CLEC performance measurements for a second transaction based on ILEC and CLEC data respectively in (see figs. And cols. 5-8).

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Pack teaches comparison between performance data associated with a CLEC and ILEC which for instance can be analyzed and generated in a graph format in (see figs.).

Pack teaches determining if parity exist between a CLEC and an ILEC and taking corrective measures if necessary in (see col. 7 lines 1-25) but fails to teach calculating a remedy to be paid.

Calculating a remedy to be paid is well known in the telecommunication industry.

Business Wire teaches in an article dated March 2, 1998 titled *"EQUAL RISK", TCG innovative statistical approach gives regulators and policy makers framework for evaluating ILEC behavior-Not Just ILEC words-In Delivery "Performance Parity" Requirement of the 1996 Telecom Act* in (see page 2 of 2) that parity can be determined and if required, imposing a remedy to be paid by an ILEC.

Business Wire teaches in an article dated Feb 25, 1998 titled *a TCG says Reducing Entanglement, Improving ILEC Performance will Accelerate Local telephone Competition* in (see page 2 of 3) that if ILEC fails to "provide Performance parity, violators must face substantial penalties if not rivals will be hostages to ILEC's entangling inefficiency and poor quality of service and hostages make poor competitors".

State Regulators have implemented performance measurement and remedy plans known as PMP as an attempt to determine whether an ILEC is disadvantaging its rivals by delivering high quality to itself than to its rivals. Michigan Public Service Commission Case no U-11830 implemented a remedy plan (see page 1, page 2 "appendix" and Ohio and Illinois established PMP which has been effect since 1999 and

Texas has the Texas 271 interconnection agreement. As part of the Michigan Plan for instance, an ILEC is required to make penalty payments directly to the affected CLEC in (see page 7 lines 1-11). Thus, the limitation of requiring an exchange to pay remedy, compensation or penalties to another was well Known based on the article.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of "Business Wire" or the known limitation of PMP into that of Pack thus making it possible to provide quality services, efficiency in services and to improve competition which translates to least cost routing or reduction in cost for communication services for customers.

Regarding claims 12-14, The combination teaches paying a remedy as compensation directly to the CLECs as well known or paying a remedy for failing to provide a service.

Regarding claim 15, the combination teaches that as part of the Michigan plan, an exchange can be penalized for subsequent infractions or failing to meet parity as known.

Claims 1, 5 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee, Jr. et al. (US Pat# 6,480,749) in view of Business Wire (February 25, March 2, 1998) or PMP as prior art based (Wood and Sappington) "on the Design of performance measurement Plans in the Telecommunications industry".

The prior art of record (Lee) teaches a method fro determining a performance and comparing measurement by taking receiving and analyzing performance data associated with service providers namely; ILEC and a CLEC and then comparing



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performance measurement data associated with the exchanges (ILEC and CLEC) but *fails to teach that the comparisons is done to determine "parity" even though, in general a comparison is usually or by nature done to determine if there is a difference, if any or the results bear a similarity.*

According to (see col. 5 lines 34-36 of Lee), performance measurements can be taken to demonstrate equality in quality (parity).

*Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was done to compare services provided or performance measurement data to determine factors such as quality of service being provided which can strongly be inferred by definition of 'performance' data, cost factors which can be used in choosing least cost carrier(s) and take corrective measures, if necessary to avoid loss of revenue.*

Furthermore, Lee fails to teach if parity doesn't exist, calculating a remedy to be paid. Not only is the remedy calculated but has to be paid out to an entity.

Business Wire teaches in an article dated March 2, 1998 titled "EQUAL RISK", *TCG innovative statistical approach gives regulators and policy makers framework for evaluating ILEC behavior-Not Just ILEC words-In Delivery "Performance Parity" Requirement of the 1996 Telecom Act* in (see page 2 of 2) that parity can be determined and if required, imposing a remedy to be paid by an ILEC.

Business Wire teaches in an article dated Feb 25, 1998 titled a TCG says *Reducing Entanglement, Improving ILEC Performance will Accelerate Local telephone Competition* in (see page 2 of 3) that if ILEC fails to "provide Performance parity,

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violators must face substantial penalties if not rivals will be hostages to ILEC's entangling inefficiency and poor quality of service and hostages make poor competitors".

State Regulators have implemented performance measurement and remedy plans known as PMP as an attempt to determine whether an ILEC is disadvantaging its rivals by delivering high quality to itself than to its rivals. Michigan Public Service Commission Case no U-11830 implemented a remedy plan (see page 1, page 2 "appendix" and Ohio and Illinois established PMP which has been effect since 1999 and Texas has the Texas 271 interconnection agreement. As part of the Michigan Plan for instance, an ILEC is required to make penalty payments directly to the affected CLEC in (see page 7 lines 1-11). Thus, the limitation of requiring an exchange to pay remedy, compensation or penalties to another was well Known based on the article.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of "Business Wire" or the known limitation of PMP into that of Pack thus making it possible to provide quality services, efficiency in services and to improve competition which translates to least cost routing or reduction in cost for communication services for customers.

***Allowable Subject Matter***

Claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments with respect to claims 1-15 have been considered but are moot in view of the new ground(s) of rejection.

Communication Daily Published Feb 3, 1999 teaches that a remedy used as a form of penalizing ILECs is known and an effective way of penalizing ILEC for not providing services in an adequate time frame would be, for instance, to further discount rates associated with services for that time period as a result of the delays.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **REXFORD N BARNIE** whose telephone number is (703)306-2744. The examiner can normally be reached on M-F 9:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CURTIS KUNTZ can be reached on (703) 305-4708. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PRIMARY EXAMINER  
REXFORD BARNIE  
03/04/05

  
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